

Cause No. 2019-_____

BRADLEY RAFFLE

v.

GRAY REED MCGRAW LLP F/K/A
LOOPER REED MCGRAW, PC, AND
JACK H. EMMOTT, III

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
& REQUEST FOR DISCLOSURE**

Plaintiff Bradley Raffle files this Original Petition against Defendants Gray Reed McGraw LLP and Jack H. Emmott, III:

DISCOVERY CONTROL PLAN

1. Pursuant TRCP 190.1 and 190.4, Plaintiff intends to conduct discovery under Level 3.

PARTIES

2. Plaintiff Bradley Raffle is a resident of Oregon. He previously resided in Houston, Harris County, Texas.

3. Defendant Gray Reed McGraw LLP (f/k/a Looper Reed McGraw, PC) is a Texas limited liability partnership, with an office in Houston, Harris County, Texas. The principle office for this Defendant is located at 1300 Post Oak Boulevard, Suite 2000, Houston, Texas 77056. The agent

for service of process for this Defendant is James C. Gray located at 1300 Post Oak Boulevard, Suite 2000, Houston, Texas 77056. ***Service of Process for this Defendant is requested at this time.***

4. Defendant Jack H. Emmott, III is an attorney licensed to practice law in the State of Texas. He resides and has his office in Harris County, Texas. He may be served with process at his office located at 1300 Post Oak Boulevard, Suite 2000, Houston, Texas 77056, or wherever he may be found. ***Service of Process for this Defendant is requested at this time.***

JURISDICTION & VENUE

5. The Harris County District Court has jurisdiction over the subject matter of this action because Plaintiff seeks to recover more than \$500, and no other court has exclusive jurisdiction over the causes of action asserted. *See* Tex. Const. art. V, § 8; Tex. Gov't Code § 24.007.

6. The Harris County District Court has jurisdiction over Defendants because Defendants are residents of and have their principle place of business in Texas, and the underlying litigation occurred in Texas.

7. Venue in Harris County is proper pursuant to Texas Civil Practice and Remedies Code §15.002(a), because Defendants resides in Harris County in Harris County. Further, Defendants' contract with Plaintiff was formed in Harris County, and the actions and omissions of Defendants occurred in Harris County.

FACTS

8. This is a legal malpractice case arising from the negligent conduct of Defendants in their representation of Plaintiff in Cause No. 2011-45102, *Susan Raffle v. Bradley Raffle*, in the 247th District Court of Harris County, Texas.

9. Defendants were hired by Plaintiff to put the terms of a November 2011 Mediated Settlement Agreement (MSA) into an Agreement Incident to Divorce (AID). Defendants failed to advise Plaintiff that they made a last-minute substantive and costly change in the version of the AID sent for Plaintiff to sign. The version of the AID sent for Plaintiff to sign conflicted with MSA and the 5 previous drafts of the AID that Defendants sent to Plaintiff. Defendants changed the formula used to calculate Plaintiff's 2018 payment obligation to his former wife. Plaintiff reasonably relied on Defendants to make sure that the AID was consistent with the MSA, and the prior drafts of the AID.

10. In January 2018, a few weeks after the AID provision with the future payment obligation became operative, Mr. Raffle was told that the AID provision at issue required him to pay his ex-wife over \$236,000—almost 16 times the figure Plaintiff agreed to in the MSA. Instead of basing his payment obligation on the degree to which the S&P 500's average rate of growth over the 5.75-year period exceeded 6%, the AID version of the provision was changed from the MSA without Plaintiff's knowledge or consent. The AID based his payment on the degree to which the compounded annual growth of the S&P 500 index exceeded 39.84%. The MSA formula Plaintiff agreed to would have totaled \$38,910, whereas the AID formula that Defendants prepared required Mr. Raffle to pay his ex-wife more than \$236,000, which represented approximately 30% of the net worth he had left after the MSA.

11. A review of Defendants' correspondence file for the underlying matter revealed that on or about January 25, 2012, nearly three months after the parties had signed the MSA, and a few weeks before they were scheduled to sign the final AID, Defendants altered the provision in a way that was highly detrimental to Plaintiff.

12. At least 5 drafts of the AID were sent to Plaintiff prior to January 25, 2012 and each had the correct S&P Provision with the MSA phraseology, including the so called "final draft" sent on January 17, 2012. Inexplicably, Defendants changed the S&P formula in the copy they sent to Plaintiff to sign on January 25, 2012, without any explanation, and without calling their last-minute substantive and costly change to Plaintiff's attention.

13. The revised payment formula in the final AID prepared by Defendants tied Plaintiff's future payment obligation to the extent by which the ["compounded growth of the S&P 500 over the 5.75-years is over 39.86%]. This resulted in a dramatic alteration of Plaintiff's financial obligation to Mrs. Raffle that was never discussed with Plaintiff. The change was made without Plaintiff's consent or knowledge. The effect of Defendants' change in the AID increased Plaintiff's financial obligation by over \$197,000.

14. Plaintiff did not discover Defendants' change in the Provision and resulting damage it caused until early 2018. During an extensive review of Defendants' file from the underlying matter, it was discovered that Defendants altered the provision from the MSA when preparing their final version of the AID sent for Plaintiff to sign. This change from the MSA was never brought to Plaintiff's attention or discussed with him by Defendants or anyone else. Although Defendants' legal assistant brought the changes from the MSA to Defendant Emmott's attention, the e-mail correspondence between Defendants and the mediator regarding the change was never brought to

Plaintiff's attention.

15. The *Hughes* Tolling Rule applies because Cause No. 2011-45102, *Susan Raffle v. Bradley Raffle*, in the 247th District Court of Harris County, Texas is still in litigation. Alternatively, the fraudulent concealment tolling doctrine and the discovery rule apply, deferring accrual of Plaintiff's cause of action and tolling limitations until Defendants' negligence and the damage it caused was discovered in 2018.

LEGAL MALPRACTICE & CAUSATION OF DAMAGES

16. Defendants are attorneys practicing law in Texas and had an attorney-client relationship with Plaintiff.

17. As Plaintiff's attorney, Defendants owed him a duty to exercise reasonable care in their legal representation of his interests.

18. Defendants breached their duties to Plaintiff by failing to properly prepare the AID and failing to advise Plaintiff that they made the substantive and costly last-minute change to the Provision in the AID that was sent to Plaintiff for signature.

19. Defendants were negligent in their representation of Plaintiff. Defendants failed to act as reasonably prudent attorneys practicing law in Texas would under similar circumstances and their representation of Plaintiff fell below the applicable standard of care.

20. Specifically, Defendant's negligent acts and omissions include, but are not limited to:

- failure to properly prepare the AID;
- failure to properly advise Plaintiff on the AID;
- failure to make sure the AID properly reflected the terms of the MSA;
- failure to zealously represent Plaintiff;
- making the unauthorized change in the AID; and
- misrepresenting to Plaintiff that the AID was consistent with the terms of the MSA and the 5 prior versions of the AID sent to Plaintiff.

21. Defendant's actions and omissions constitute gross negligence entitling Plaintiff to recover exemplary damages.

BREACH OF FIDUCIARY DUTY & FRAUDULENT CONCEALMENT

22. As Plaintiff's attorneys, Defendants owed a fiduciary duty to Plaintiff.

23. Defendants breached their fiduciary duty to Plaintiff by failing to inform Plaintiff

24. Defendants knew they had been negligent in negotiating, advising, preparing, and representing Plaintiff on the AID. Their negligence was a material fact within their knowledge.

25. Defendants knew Plaintiff was ignorant of the fact they had inserted the unauthorized provision change in the AID and that they committed malpractice. Plaintiff did not have an equal opportunity to discover Defendants' negligence.

26. Defendants fraudulently concealed from Plaintiff the fact that they had committed malpractice and made the unauthorized change in the AID.

27. Plaintiff reasonably relied on the deception of Defendants which effectively concealed Defendants' negligence from Plaintiff.

28. Defendants' fraudulent concealment of the facts giving rise to the Plaintiff's claims arising from Defendants' negligence tolls the statute of limitations as long as the fiduciary relationship existed.

29. Defendants' fiduciary duty to Plaintiff required him to disclose that he had been negligent, and that the statute of limitations was running on Plaintiff's claims against Defendants for their breach of their standard of care. Defendants' failure to disclose this information to Plaintiff was an ongoing breach of his fiduciary duty.

30. Defendants' breach of fiduciary duty benefited them, and Defendants should be required to forfeit and disgorge all fees received from Plaintiff.

31. Plaintiff is entitled to actual damages and equitable relief for Defendants' breach of their fiduciary duty.

CONDITIONS PRECEDENT

32. All conditions precedent have been performed or have occurred.

DAMAGES

33. Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000.

34. Defendants' negligence proximately caused Plaintiff to suffer approximately \$325,000 in damages to date, including but not limited to, the \$197,000 impact of the unauthorized Provision changes in the AID, the income taxes he will owe as a result of withdrawing funds from his IRA to pay Mrs. Raffle, and the expenses he has incurred to date, including travel costs, and lawyer

time necessary to resolve his dispute with Mrs. Raffle in mitigation of the damages caused by Defendants.

REQUEST FOR DISCLOSURES

35. Pursuant to Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose all information and material described in Rule 194.2 within 30 days of the service of this request.

JURY TRIAL

36. Pursuant to Texas Rule of Civil Procedure 216, Plaintiff requests a jury trial. Plaintiff has paid the fee required by Texas Government Code, Section 51.604, including the fee required by Texas Rule of Civil Procedure 216(b), with the filing of this petition.

PRAYER

38. For the above reasons, Plaintiff requests that the Court enter judgment against Defendants, awarding the following in favor of Plaintiff:

- a. actual damages within the jurisdictional limits of this Court;
- b. prejudgment interest at the maximum rate allowed by law;
- c. fee disgorgement;
- d. exemplary damages;
- e. attorney's fees;
- f. court costs;
- g. post-judgment interest at the maximum rate allowable by law; and
- h. all other just relief.

Respectfully submitted,

LAW OFFICE OF STEVEN M. DUBLE

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ATTORNEY FOR PLAINTIFF

Unofficial Copy Office of Marilyn Burgess District Clerk